

**APPENDIX A.2.B*****Federal Deposit Insurance Corp. as Receiver for Amcore Bank N.A., et al., v. Bank of America Corp., et al., 14-cv-1757*****Negligent Misrepresentation Claims<sup>1</sup>**

Date Filed: March 14, 2014

Alleges conduct occurred from August 2007 – mid-2011. (FDIC-R Compl. ¶ 288; *see also id.* ¶¶ 293, 297)

<b>Failed Financial Institution<sup>2</sup></b>	<b>State</b>	<b>FDIC Appointment<sup>3</sup></b>	<b>Statute of Limitations</b>	<b>Discovery Rule<sup>4</sup></b>
Colonial Bank	Alabama	August 14, 2009	Two years from discovery. Ala. Code §§ 6-2-38(l), 6-2-3; <i>Fowler v. Provident Life &amp; Accident Ins. Co.</i> , 256 F. Supp. 2d 1243, 1248 (N.D. Ala. 2003).	“The limitations period applicable to [the fraudulent misrepresentation] claim[] . . . is two years, and begins to run on the date plaintiff discovers, or should have discovered, the fraud and the misrepresentation.”

<sup>1</sup> This table corresponds to Schedule F.3 of Defendants’ Master Appendix (Dkt. 743-1).

<sup>2</sup> The below listed financial institutions include only those whose claims the Defendants seek to dismiss on statute of limitations grounds.

<sup>3</sup> The FDIC-R’s claims are subject to the FDIC Extender Statute, which provides the longer of (1) the state statute of limitations period for negligent misrepresentation claims or (2) three years beginning from the later of (1) claim accrual or (2) FDIC appointment. *See* 12 U.S.C. § 1821(d)(14).

<sup>4</sup> Column E discusses state law as to claim accrual. The statute of limitations for these claims may be tolled by Defendants’ fraudulent concealment.

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Superior Bank	Alabama	April 15, 2011	Two years, pursuant to Ala. Code § 6-2-38(1); <i>Fowler v. Provident Life &amp; Accident Ins. Co.</i> , 256 F. Supp. 2d 1243, 1248 (N.D. Ala. 2003).	“The limitations period applicable to [the fraudulent misrepresentation] claim[] . . . is two years, and begins to run on the date plaintiff discovers, or should have discovered, the fraud and the misrepresentation.”
Downey Savings and Loan Association, F.A.	California	November 21, 2008	Two years after discovery. Cal. Civ. Proc. Code § 339(1); <i>Platt Elec. Supply, Inc. v. EOFF Elec., Inc.</i> , 522 F.3d 1049, 1054 (9th Cir. 2008).	Negligent misrepresentation accrues when “the plaintiff either discovers or has reason to discover the existence of a claim, i.e., at least has reason to suspect a factual basis for its elements.”
California National Bank	California	October 30, 2009	Two years after discovery. Cal. Civ. Proc. Code § 339(1); <i>Platt Elec. Supply, Inc. v. EOFF Elec., Inc.</i> , 522 F.3d 1049, 1054 (9th Cir. 2008).	Negligent misrepresentation accrues when “the plaintiff either discovers or has reason to discover the existence of a claim, i.e., at least has reason to suspect a factual basis for its elements.”

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First Federal Bank of California, F.S.B.	California	December 18, 2009	Two years after discovery. Cal. Civ. Proc. Code § 339(1); <i>Platt Elec. Supply, Inc. v. EOFF Elec., Inc.</i> , 522 F.3d 1049, 1054 (9th Cir. 2008).	Negligent misrepresentation accrues when “the plaintiff either discovers or has reason to discover the existence of a claim, i.e., at least has reason to suspect a factual basis for its elements.”
First Regional Bank	California	January 29, 2010	Two years after discovery. Cal. Civ. Proc. Code § 339(1); <i>Platt Elec. Supply, Inc. v. EOFF Elec., Inc.</i> , 522 F.3d 1049, 1054 (9th Cir. 2008).	Negligent misrepresentation accrues when “the plaintiff either discovers or has reason to discover the existence of a claim, i.e., at least has reason to suspect a factual basis for its elements.”
Imperial Capital Bank	California	December 18, 2009	Two years after discovery. Cal. Civ. Proc. Code § 339(1); <i>Platt Elec. Supply, Inc. v. EOFF Elec., Inc.</i> , 522 F.3d 1049, 1054 (9th Cir. 2008).	Negligent misrepresentation accrues when “the plaintiff either discovers or has reason to discover the existence of a claim, i.e., at least has reason to suspect a factual basis for its elements.”

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Indymac Bank F.S.B.	California	July 11, 2008	Two years after discovery. Cal. Civ. Proc. Code § 339(1); <i>Platt Elec. Supply, Inc. v. EOFF Elec., Inc.</i> , 522 F.3d 1049, 1054 (9th Cir. 2008).	Negligent misrepresentation accrues when “the plaintiff either discovers or has reason to discover the existence of a claim, i.e., at least has reason to suspect a factual basis for its elements.”
La Jolla Bank, F.S.B.	California	February 19, 2010	Two years after discovery. Cal. Civ. Proc. Code § 339(1); <i>Platt Elec. Supply, Inc. v. EOFF Elec., Inc.</i> , 522 F.3d 1049, 1054 (9th Cir. 2008).	Negligent misrepresentation accrues when “the plaintiff either discovers or has reason to discover the existence of a claim, i.e., at least has reason to suspect a factual basis for its elements.”
Pacific National Bank	California	October 30, 2009	Two years after discovery. Cal. Civ. Proc. Code § 339(1); <i>Platt Elec. Supply, Inc. v. EOFF Elec., Inc.</i> , 522 F.3d 1049, 1054 (9th Cir. 2008).	Negligent misrepresentation accrues when “the plaintiff either discovers or has reason to discover the existence of a claim, i.e., at least has reason to suspect a factual basis for its elements.”

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PFF Bank & Trust	California	November 21, 2008	Two years after discovery. Cal. Civ. Proc. Code § 339(1); <i>Platt Elec. Supply, Inc. v. EOFF Elec., Inc.</i> , 522 F.3d 1049, 1054 (9th Cir. 2008).	Negligent misrepresentation accrues when “the plaintiff either discovers or has reason to discover the existence of a claim, i.e., at least has reason to suspect a factual basis for its elements.”
San Diego National Bank	California	October 30, 2009	Two years after discovery. Cal. Civ. Proc. Code § 339(1); <i>Platt Elec. Supply, Inc. v. EOFF Elec., Inc.</i> , 522 F.3d 1049, 1054 (9th Cir. 2008).	Negligent misrepresentation accrues when “the plaintiff either discovers or has reason to discover the existence of a claim, i.e., at least has reason to suspect a factual basis for its elements.”
United Commercial Bank	California	November 6, 2009	Two years after discovery. Cal. Civ. Proc. Code § 339(1); <i>Platt Elec. Supply, Inc. v. EOFF Elec., Inc.</i> , 522 F.3d 1049, 1054 (9th Cir. 2008).).	Negligent misrepresentation accrues when “the plaintiff either discovers or has reason to discover the existence of a claim, i.e., at least has reason to suspect a factual basis for its elements.”

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Community Banks of Colorado	Colorado	October 21, 2011	Three years from discovery. Colo. Rev. Stat. § 13-80-101(c); <i>Shriners Hospitals for Children v. Qwest Commc'ns Int'l Inc.</i> , No. 04-CV-0781-REB-CBS, 2005 WL 2350569, at *12 (D. Colo. Sept. 23, 2005	“A cause of action for fraud, misrepresentation, concealment, or deceit shall be considered to accrue on the date such fraud, misrepresentation, concealment, or deceit is discovered or should have been discovered by the exercise of reasonable diligence.”
United Western Bank	Colorado	January 21, 2011	Three years from discovery. Colo. Rev. Stat. §§ 13-80-101(c), 13-80-108(3); <i>Shriners Hospitals for Children v. Qwest Commc'ns Int'l Inc.</i> , No. 04-CV-0781-REB-CBS, 2005 WL 2350569, at *12 (D. Colo. Sept. 23, 2005	“A cause of action for fraud, misrepresentation, concealment, or deceit shall be considered to accrue on the date such fraud, misrepresentation, concealment, or deceit is discovered or should have been discovered by the exercise of reasonable diligence.”

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BankUnited, F.S.B.	Florida	May 21, 2009	Four years from discovery. Fla. Stat. §§ 95.11(3)(j), 95.031(2)(a); <i>Allocco v. City of Coral Gables</i> , 221 F. Supp. 2d 1317, 1359 n.17 (S.D. Fla. 2002), <i>aff'd</i> , 88 F. App'x 380 (11th Cir. 2003).	“An action founded upon fraud under § 95.11(3) . . . must be begun within the period prescribed in this chapter, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence . . . but in any event an action for fraud under s. 95.11(3) must be begun within 12 years after the date of the commission of the alleged fraud, regardless of the date the fraud was or should have been discovered.”

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Lydian Private Bank	Florida	August 19, 2011	Four years from discovery. Fla. Stat. §§ 95.11(3)(j), 95.031(2)(a); <i>Allocco v. City of Coral Gables</i> , 221 F. Supp. 2d 1317, 1359 n.17 (S.D. Fla. 2002), <i>aff'd</i> , 88 F. App'x 380 (11th Cir. 2003).	“An action founded upon fraud under § 95.11(3) . . . must be begun within the period prescribed in this chapter, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence . . . but in any event an action for fraud under s. 95.11(3) must be begun within 12 years after the date of the commission of the alleged fraud, regardless of the date the fraud was or should have been discovered.”



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Orion Bank	Florida	November 13, 2009	Four years from discovery. Fla. Stat. §§ 95.11(3)(j), 95.031(2)(a); <i>Allocco v. City of Coral Gables</i> , 221 F. Supp. 2d 1317, 1359 n.17 (S.D. Fla. 2002), <i>aff'd</i> , 88 F. App'x 380 (11th Cir. 2003).	“An action founded upon fraud under § 95.11(3) . . . must be begun within the period prescribed in this chapter, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence . . . but in any event an action for fraud under s. 95.11(3) must be begun within 12 years after the date of the commission of the alleged fraud, regardless of the date the fraud was or should have been discovered.”
Georgian Bank	Georgia	September 25, 2009	Four years from discovery. Ga. Stat. §§ 9-3-31, 9-3-96; <i>PricewaterhouseCoopers, LLP v. Bassett</i> , 293 Ga. App. 274, 278 n.6 (2008).	“If the defendant or those under whom he claims are guilty of a fraud by which the plaintiff has been debarred or deterred from bringing an action, the period of limitation shall run only from the time of the plaintiff's discovery of the fraud.”

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Silverton Bank, N.A.	Georgia	May 1, 2009	Four years from discovery. Ga. Stat. §§ 9-3-31, 9-3-96; <i>PricewaterhouseCoopers, LLP v. Bassett</i> , 293 Ga. App. 274, 278 n.6 (2008).	“If the defendant or those under whom he claims are guilty of a fraud by which the plaintiff has been debarred or deterred from bringing an action, the period of limitation shall run only from the time of the plaintiff’s discovery of the fraud.”
Hillcrest Bank	Kansas	October 22, 2010	Two years. Kan. Stat. Ann. §§ 60-513(a)(4), 60-513(b); <i>Dung Kim Thi Lai v. Bank of Am., N.A.</i> , No. 13-1221-JWL, 2013 WL 5651739 (D. Kan. Oct. 16, 2013)	“[T]he causes of action listed in subsection (a) shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until sometime after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party.”
Amtrust Bank	Ohio	December 4, 2009	Four years. Ohio Rev. Code 2305.09; <i>Chandler v. Schriml</i> , 2000 Ohio App. LEXIS 2209, at *11 (Ohio Ct. App. May 25, 2000)	

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Washington Mutual Bank	Nevada	September 25, 2008	Three years from discovery. Nev. Rev. Stat. § 11.190(3)(d); <i>Kancilia v. Claymore &amp; Dirk Ltd. P'ship</i> , 2014 WL 3731862, at *1 (Nev. July 24, 2014).	“The cause[] of action for . . . negligent misrepresentation [is] deemed to begin to accrue on the discovery of the facts constituting the . . . fraud.”
Eurobank	Puerto Rico	April 30, 2010	One year from discovery. P.R. Laws Ann. tit. 31, §§ 5141, 5298; <i>see Doe 171 v. Order of Saint Benedict</i> , 2012 WL 1410320, at *3 n.3 (D.P.R. Apr. 20, 2012).	“Actions to demand civil liability for grave insults or calumny, and for obligations arising from the fault or negligence mentioned in § 5141 of this title, from the time the aggrieved person had knowledge thereof.”
R-G Premier Bank of Puerto Rico	Puerto Rico	April 30, 2010	One year from discovery. P.R. Laws Ann. tit. 31, §§ 5141, 5298; <i>see Doe 171 v. Order of Saint Benedict</i> , 2012 WL 1410320, at *3 n.3 (D.P.R. Apr. 20, 2012).	“Actions to demand civil liability for grave insults or calumny, and for obligations arising from the fault or negligence mentioned in § 5141 of this title, from the time the aggrieved person had knowledge thereof.”

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Westernbank Puerto Rico	Puerto Rico	April 30, 2010	One year from discovery. P.R. Laws Ann. tit. 31, §§ 5141, 5298; <i>see Doe 171 v. Order of Saint Benedict</i> , 2012 WL 1410320, at *3 n.3 (D.P.R. Apr. 20, 2012).	“Actions to demand civil liability for grave insults or calumny, and for obligations arising from the fault or negligence mentioned in § 5141 of this title, from the time the aggrieved person had knowledge thereof.”
First National Bank	Texas	September 13, 2013	Two years from discovery. Tex. Civ. Prac. & Rem. Code § 16.003(a); <i>Malik v. ConocoPhillips Co.</i> , 2014 WL 3420775, at *3 (E.D. Tex. June 23, 2014).	Where “the nature of the injury is inherently undiscoverable and objectively verifiable,” claim for negligent misrepresentation accrues when the “plaintiff knows, or reasonably should have known of the facts giving rise to the claim”
Guaranty Bank	Texas	August 21, 2009	Two years from discovery. Tex. Civ. Prac. & Rem. Code § 16.003(a); <i>Malik v. ConocoPhillips Co.</i> , 2014 WL 3420775, at *3 (E.D. Tex. June 23, 2014).	Where “the nature of the injury is inherently undiscoverable and objectively verifiable,” claim for negligent misrepresentation accrues when the “plaintiff knows, or reasonably should have known of the facts giving rise to the claim”

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Frontier Bank	Wash.	April 30, 2010	Three years from discovery. Wash. Rev. Code Ann. § 4.16.080(4); First <i>Maryland Leasecorp v. Rothstein</i> , 72 Wash. App. 278, 286 (1993)	“The following actions shall be commenced within three years . . . An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.”